be the amount the plaintiff is out of pocket by having this property instead of his money, together with the loss of interest and the expenses directly attributable to the defendant's fraud. Where the suit is for a breach of warranty the measure of damages must of necessity be entirely different, for then the defendant is liable on a contract, and if it is broken he must make good what the plaintiff loses by its not being fulfilled. That in the same transaction the defendant has made a fraudulent misrepresentation as well as a contract by no means necessitates the damages in the tort action being the same as those for the breach of contract. The two rights of action are entirely separate, and the rule of damages appropriate to tort actions must apply in a suit for the tort, though the very statement that constitutes a warranty may, and perhaps generally does, furnish a cause of action for deceit. The presence of these alternative remedies was probably the cause of the erroneous rule of damages that so largely prevails in this country.

RIGHTS UNDER A THEATRE TICKET. — An interesting question as to the nature of a ticket for a reserved seat in a theatre is suggested by a recent decision, where the plaintiff, a colored man, was allowed to recover in tort for being ejected from his seat in the theatre during the performance. *Ferguson* v. *Chase*, Washington Law Reporter, Nov. 22, 1900. The court rely on the doctrine of *Drew* v. *Peer*, 93 Pa. St. 234, where there is a strong *dictum* to the effect that holders of particular seats have more than a mere license, their right being "in the nature of a lease, and entitling them, therefore, to peaceable ingress and egress, and exclusive possession of the designated seats during the performance." The weight of authority, it seems, is contrary to this view. Most of the few cases on the subject treat a ticket as a mere license. Wandell's Law of the Theatre, 221. Accordingly when the purchaser of a ticket was expelled from the grand stand of a race-track an action of assault and battery was refused on the ground that the license was revocable, and that upon its revocation the purchaser became a mere trespasser who could rightfully be removed from the premises. *Wood* v. *Leadbitter*, 13 M. & W. 838. In Massachusetts this English decision has been followed, and a theatre manager has been held justified in refusing to allow the holder of a ticket to take his seat in the theatre. *Burton* v. *Scherpf*, 1 Allen, 133; *McCrea* v. *Marsh*, 12 Gray, 211. In the latter case it is said that the right conferred by a theatre ticket is a contract implied from the sale and delivery of the ticket, which gives the holder a license to enter the theatre and watch the performance. Under this doctrine the proprietor may exclude any spectator at any time, and be answerable only on the contract for whatever legal damages his breach has caused. It may be noted that in the English and Massachusetts decisions it does not appear that the ticket called for any particular seat, as in the principal case. Of course such being the fact it would be impossible to construe the ticket as a lease. Where, however, the ticket does call for a particular seat, exclusive possession for a specified time is given, and there is a sufficient memorandum of the agreement; thus it may be argued that no essential element of a lease is lacking. The answer seems to rest in the fact that in the sale of a ticket no lease is intended. It is often expressly stated on such tickets that "the management reserve the right to revoke this license on refunding

its face value." A strong analogy may be drawn from the case of a lodger under an oral contract for board and lodgings in a private boarding-house. The keeper of the house reserves the legal possession, custody, and care of the whole house in which the lodger is but a licensee, his contract not being regarded as a lease of realty. *White* v. *Maynard*, 111 Mass. 250; *Wilson* v. *Martin*, 1 Den. (N. Y.) 602. Nor is the management of a theatre under a duty to the public to give a performance, for, although the state exacts a license for the privilege of giving theatrical exhibitions, this in no way changes the character of the theatre from a private to a public undertaking. Accordingly admission cannot be demanded as of right. *Purcell* v. *Daly*, 19 Abb. N. C. 301 (N. Y.).

It seems, therefore, both on principle and authority, that a theatre ticket can, in no way, be regarded as more than a revocable license, and although it may be repugnant to the average theatre-goer's conception of his right, it is probably law to-day that he may be required to leave the theatre at any time without being able to hold the proprietor responsible in an action of tort.

GRANTEE'S ASSENT TO THE DELIVERY OF A DEED. — The much disputed question of the validity of a deed, made without the grantee's knowledge or assent, arose in a recent case. The owner of certain property deeded it to the plaintiff, in payment of a debt, and sent the deed to the recorder's office to be registered. Between the time of the delivery to the recorder and the delivery to the plaintiff, who had previously no knowledge of the deed, the defendant attached the land. The court held that, as a deed requires the grantee's actual assent, the attachment was levied before the deed took effect. *Knox* v. *Clark*, 62 Pac. Rep. 334 (Col.). In America, while many courts agree with the principal case, an equal number hold that assent will be presumed at least where the deed is beneficial, unless dissent is shown. *Welch* v. *Sackett*, 12 Wis. 243; *Mitchell* v. *Ryan*, 3 Ohio St. 377.

In early English law it seems that a deed passed title without assent on the grantee's part, just as now an heir or a remainderman necessarily takes title without assent. *Butler and Baker's Case*, 3 Co. 26 b. The transaction was regarded as unilateral, and it is probable that a dissenting grantee had to divest himself of title by deed. As it was felt desirable, however, that a gift, which might involve liabilities, should not be forced on a man against his will, so that he might not only be put to the trouble of deeding it away, but could be held responsible for any liabilities which might accrue by reason of its possession, a right of disclaimer was recognized. The grantee was permitted, on hearing of the deed, to dissent to the gift, whereupon not only his title, but likewise any liabilities which might have accrued to him in the mean time, were at once divested. Although some of the later English cases, not carefully distinguishing between actual dissent, the exercise of the right to disclaim, and a lack of assent, where the right to disclaim still exists, have stated in loose terms that assent is necessary, but that it will be presumed where no actual dissent is shown, yet the doctrine of disclaimer is generally considered in England as the basis of the law. *Siggins* v. *Evans*, 5 E. & B. 367.

The American courts, in recognizing the inadvisability of forcing property on an unwilling grantee, have unfortunately adopted the erroneous